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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/035,090

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Dannie E. Martin

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09/10/2004

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EXAMINER

DAVIS, TEMICA M

ART UNIT

PAPER NUMBER

2681

DATE MAILED: 09/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/035,090

Applicant(s)

MARTIN, DANNIE E.

Examiner

Temica M. Davis

Art Unit

2681

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 26 December 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-11, 13, 14 and 16-28 are rejected under 35 U.S.C. 102(e) as being anticipated by Hendrey et al (Hendrey), U.S. Patent No. 6,647,269.

Regarding claims 1, 8, 17 and 23, Hendrey discloses a device/method/system for managing text messages sent by an advertiser to mobile subscribers (figure 1), comprising: an advertiser interface module for receiving from the advertiser content of a text message and at least one criterion (i.e., location/distance of a user relative to a store) (col. 4, lines 27-45); and a database management module in communication with the advertiser interface module for interrogating a database to determine the mobile subscribers that satisfy the criterion (col. 5, lines 12-39).

Regarding claims 2, 11 and 24, Hendrey discloses the device/method/system of claims 1, 8 and 23 further comprising a cost calculator module in communication with the advertiser interface module for calculating a cost of transmitting the text message to each of the mobile subscribers that satisfy the criterion (col. 2, lines 56-60).

Regarding claims 3, 10 and 25, Hendrey discloses the device/method/system of claims 1, 8 and 23 further comprising a text filter module in communication with the advertiser interface module for filtering the content of the text message for predetermined character strings (col. 5, lines 19-24).

Regarding claims 4 and 26, Hendrey discloses the device/method/system of claims 1 and 23 further comprising: a cost calculator module in communication with the advertiser interface module for calculating a cost of transmitting the text message to each of the mobile subscribers that satisfy the criterion (col. 2, lines 56-60); and a text filter module in communication with the advertiser interface module for filtering the content of the text message for predetermined character strings (col. 5, lines 19-24).

Regarding claim 5, Hendrey discloses the device of claim 4, further comprising a mobile subscriber interface module in communication with the database management module (figure 1).

Regarding claims 6, 9 and 28, Hendrey discloses the device/method/system of claims 1, 8 and 23 wherein the advertiser interface module is further for receiving from the advertiser a time at which the text message is to be transmitted to the mobile subscribers that satisfy the criterion (col. 5, lines 19-24).

Regarding claim 7, Hendrey discloses the device of claim 1, wherein the text message is short message system message (col. 3, lines 33-36).

Regarding claim 13, Hendrey discloses the method of claim 8, further comprising charging the advertiser for sending the text message to each of the mobile subscribers that satisfy the criterion (col. 2, lines 56-60).

Regarding claim 14, Hendrey discloses the method of claim 13, further comprising charging the advertiser a subscription fee (col. 2, lines 56-60).

Regarding claims 16 and 27, Hendrey discloses the method/device of claims 8 and 26, further comprising receiving an input (i.e., purchase information) from at least one mobile subscriber relative to the criterion (col. 5, lines 42-49).

Regarding claim 18, Hendrey discloses the system of claim 17, wherein the advertiser manager platform is for: receiving from the advertiser content of the text message and at least one criterion for the mobile subscribers; and interrogating the database to determine each of the mobile subscribers that satisfy the criterion (col. 5, lines 12-39).

Regarding claim 19, Hendrey discloses the system of claim 18, wherein the advertiser manager platform is further for: calculating a cost of transmitting the text message to each of the mobile subscribers that satisfy the criterion (col. 2, lines 56-60); and filtering the content of the text message for predetermined character strings (col. 5, lines 19-24).

Regarding claim 20, Hendrey discloses the system of claim 17, wherein the advertiser manager platform includes: an advertiser interface module; and a database management module in communication with the advertiser interface module (figure 1).

Regarding claim 21, Hendrey discloses the system of claim 20, wherein the advertiser manager platform includes a cost calculation module in communication with the advertiser interface (col. 2, lines 56-60) module and a text filter module in communication with the advertiser interface module (col. 5, lines 19-24).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 12 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hendrey.

Regarding claim 12, Hendrey discloses the method of claim 8 as described above. Hendrey, however, fails to disclose further comprising receiving authorization from the advertiser after calculating the cost and before sending the text message.

However, the examiner believes that the above limitation would not render the claims patentable over the applied reference because it merely depends if the system would like to receive permission before performing the calculation and sending the advertisement, without changing the scope of the invention in the applied reference.

Therefore, at the time of invention, it would have been obvious to a person of ordinary skill in the art to modify Hendrey with the above limitation for the purpose of ensuring that the system receives authority to perform certain functions before the functions are performed.

Regarding claim 15, Hendrey discloses the method of claim 8 as described above. Hendrey, however, fails to disclose charging the mobile subscribers a reduced

wireless service subscription rate for permission to send text messages from the advertiser to the mobile subscribers.

Hendrey does, however further teach that consumers do not like to receive calls/messages from telemarketers because of charges that the consumer may have to pay (col. 1, line 64-col. 2, line 5).

Therefore, at the time of invention, it would have been obvious to a person of ordinary skill in the art to modify Hendrey with offering a user a reduced rate for receiving an advertisement for the purpose of helping a consumer save money on the cost of received calls/advertisements from third parties.

### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Zellner et al, U.S. Pub. No. 2002/0077118.

Buss et al, U.S. Patent No. 5,539,395.

Bhatia, U.S. Patent No. 6,052,591.

Bouve et al, U.S. Patent No. 6,415,291.

Stewart, U.S. Patent No. 6,452,498.

Stead, U.S. Pub. No. 2002/0151313.

Himmelstein, U.S. Pub. No. 2004/0145459.

Teshima, U.S. Pub. No. 2002/0032035.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Temica M. Davis whose telephone number is (703) 306-5837. The examiner can normally be reached on Monday-Thursday (alternate Fridays) 8:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Hudspeth can be reached on (703) 308-4825. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Temica M. Davis  
Examiner  
Art Unit 2681

September 2, 2004

A handwritten signature in black ink, appearing to read "Temica M. Davis", with a stylized flourish extending from the end.